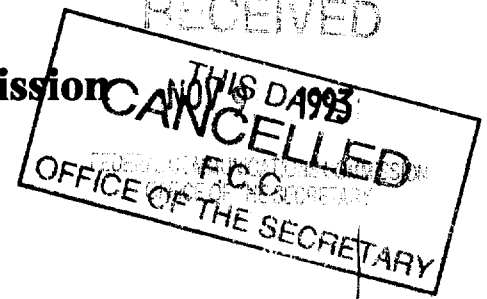


BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554



In the Matter of )

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

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**COMMENTS OF  
INDEPENDENT CELLULAR CONSULTANTS**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Independent Cellular Consultants, sometimes hereinafter referred to as "ICC", by its attorney, pursuant to the Notice of Proposed Rule Making ("Notice") adopted in the above-captioned proceeding, respectfully submits these Comments for consideration by the Federal Communications Commission.<sup>1/</sup>

**I. PRELIMINARY STATEMENT**

1. Independent Cellular Consultants is in the business of providing application filing assistance to eligible entities seeking the authorization of facilities in Commission-regulated radio services, including the Private Land Mobile (Part 90), Private Operational-Fixed Microwave (Part 94), Domestic Public Cellular Radio Telecommunications

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<sup>1/</sup> Notice of Proposed Rule Making (FCC 93-455), released October 12, 1993.

(Part 22), and the Interactive Video and Data Service (IVDS) (Part 95 - Subpart F). Most recently, ICC has assisted its clients in the filing of IVDS applications for the nine markets that were accepted for filing by the Commission during July, August, and September of 1992.

2. In its Notice, the Commission tentatively concludes that the award of IVDS licenses for markets beyond the top nine markets already filed for should be subject to the system of competitive bidding as described in revised Section 309(j) of the Communications Act. ICC strongly opposes the Commission's tentative conclusion, and urges that the Commission consider instead that IVDS licensees may offer their service to the public in a format other than on a commercial subscriber basis, thus affording the Commission the discretion to utilize a lottery system as the means of awarding IVDS licenses. Employing the statute's "principal use" standard for evaluating whether specific radio services meet the threshold to be subject to auctions, the Commission must first carefully evaluate the actual operations of IVDS systems prior to reaching a conclusion that auctions are appropriate for this service. ICC submits that because there is no type-accepted IVDS equipment currently available (and hence no systems have yet been licensed), the Commission must wait until actual IVDS operations commence

before determining whether or not the generation of commercial subscriber revenue is the "principal use" for IVDS. For example, the service may be provided on a "no fee" basis to residential participants, with IVDS system revenues derived from commercial entities such as home shopping networks, banks, interactive service providers, advertisers and others who pay the IVDS system licensee for access to system participants. This model is similar to that employed by over-the-air broadcast services which have been exempted from competitive bidding procedures. Accordingly, in the absence of monthly subscriber revenue flowing from IVDS participants to IVDS licensees, the Commission ought to exempt the IVDS from the auction procedures.

## II. DISCUSSION

3. ICC is strongly opposed to the Commission's prejudgment in the Notice that auctions should be employed for all future mutually-exclusive IVDS applications. Should the Commission fail, however, to reconsider its hasty conclusion regarding this service, ICC strongly urges that auction procedures must carefully take into account the importance of protecting the needs of small entrepreneurs who may seek to provide IVDS service to the public.

Therefore, ICC is pleased to provide these Comments responsive to the Commission's invitation to address auction procedures in the context of the IVDS, PCS and future frequency allocations that may be implemented by the Commission.

**A. IVDS Spectrum Set-Asides Will Protect the Interests of Small Entrepreneurs.**

4. The revised legislation requires that any auction procedures must entail:

"promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses . . .2/

ICC respectfully submits that the Commission recognize that the IVDS represents a unique opportunity to advance two statutory/FCC goals: (1) expedited provision of full IVDS service to the public; and (2) promotion of participation by small entrepreneurs in telecommunications services.

Therefore, any IVDS auction procedures should be crafted to enhance the opportunity of small entrepreneurs to provide IVDS. This position is echoed by Commissioner Duggan, who has spoken eloquently on the danger that auction procedures may favor "deep pockets," and on the efficacy of frequency

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2/ Section 309(j)(3)(B).

set-asides, payment of winning bids over time, and other methods for ensuring that small entrepreneurs have the opportunity to participate in competitive bidding and America's telecommunications future.<sup>3/</sup>

5. ICC believes that the first step toward protecting the interests of small entrepreneurs is to create a truly meaningful "set-aside" in the IVDS for small entrepreneurs. The Notice observes that the IVDS may be an appropriate service for such a set-aside.<sup>4/</sup> Specifically, ICC urges that at least one of the two frequency blocks within each IVDS market should be reserved for small entrepreneurs. Further, the Commission ought to give serious consideration to reserving both IVDS frequency blocks in markets below the top 100 for small entrepreneurs. The definition of "small entrepreneur" offered by the Small Business Administration in Footnote 51 of the Notice is adequate. Failure of the Commission to set-aside IVDS licenses for competitive bidding by small entrepreneurs, particularly in smaller markets where small entrepreneurs are more likely to be committed to aggressive IVDS system development, could lead

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<sup>3/</sup> "Spectrum Auctions and the Common Good," Remarks of Commissioner Duggan to the TeleStrategies Spectrum Auctions Conference, November 1, 1993, pp. 4-5.

<sup>4/</sup> See Notice, para. 75, fn. 50.

to a stifling of this new technology by existing large-scale telecommunications providers. Without a set-aside and the other pro-small entrepreneur revisions urged herein, the Commission's auction proposal would permit large telecommunications providers, for various anti-competitive reasons, to easily bid for and control IVDS system spectrum without making the fullest use of this public resource. The incentives of these large entities may not be to initiate this service to the public in the most innovative and timely manner, but rather to ensure that the service, if it exists at all, operates as an adjunct to their existing large telecommunications service offerings.

**B. Sealed Bidding, Royalty Payments and  
Dispensation of "Upfront" Payments Are  
Methods for Protecting Small  
Entrepreneurs.**

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6. Oral bidding should not be used for IVDS licenses. Oral bidding rewards existing telecommunications service providers with substantial financial resources and large entities with local Washington connections. Alternatively, sealed or electronically filed bidding permits access from remote locations. ICC notes that many small entrepreneurs may not have the resources to travel to Washington, D.C. to attend and participate in an oral bidding process. While the focus of the Commission's Notice is on avoiding

collusion among bidders, ICC respectfully submits that the Commission should be more concerned about precluding small entrepreneurs from accessing the markets they may wish to serve.

7. ICC submits that competitive bidding should be accomplished in the IVDS by descending market order for each of the 734 IVDS markets. IVDS blocks within a single market should be auctioned separately, with the "A" block auctioned first, since in many markets the value of the second block of spectrum may be considerably less than the value of the first block.

8. ICC is disturbed by the Notice's emphasis on the "efficient and rapid aggregation of licenses". ICC notes that this emphasis, which pervades the Notice, runs counter to the legislation's demand for licensee diversity and the crafting of preferences for, among others, small entrepreneurs. With respect to small entrepreneurs, ICC urges that the Commission carefully reconsider its tentative conclusion that full payment in lump sum of the winning competitive bid should be required for IVDS auctions. For small entrepreneurs, royalties offer the greatest opportunity for broad participation in this industry. In the same vein, the performance requirements that the Notice

proposes to impose on auction winners are unnecessary. Having bid for and been awarded an IVDS authorization, the awardee should be accorded discretion by the Commission as to the manner in which he or she will implement the already stringent IVDS construction and operation requirements.<sup>5/</sup>

9. Likewise, the Commission should consider dispensing entirely with "up front" payments for IVDS markets on which small entrepreneurs may bid. Though the spectrum size of the IVDS frequency block is small (500 kHz) the Commission ought to consider that a market area with a population of 500,000 would still require an "up front" auction admission payment of \$5,000. Should the Commission determine however, that "up front" payments are required for IVDS auctions, ICC urges that the "up front" payment be credited to the winner's bid.

10. Finally, minor ownership changes should be permitted by auction applicants prior to the auction. Small entrepreneurs, in particular, require the structural flexibility of changing corporate, partnership or individual structure between the time an auction application is made and the point at which the auction commences.

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<sup>5/</sup> Report and Order, PR Docket No. 91-2, 7 FCC Rcd 1630 (1992) at paragraphs 73-80.



11. In support of frequency set-asides, sealed bidding, reliance on royalty payments and a dispensation from "up front" auction admission payments, ICC notes that the statute requires the Commission to "seek to design and test multiple alternative methodologies." Irrespective of the auction methodologies and payment mechanisms selected for other radio services, ICC urges that the Commission regard the IVDS as appropriate spectrum where it can meet the statute's mandate to test alternative methodologies which the Commission might not select for larger radio services.

**WHEREFORE, THE PREMISES CONSIDERED,** Independent Cellular Consultants hereby respectfully submits the foregoing Comments and urges that the Federal Communications Commission act in a manner fully responsive to the recommendations herein.

Respectfully submitted,

**INDEPENDENT CELLULAR CONSULTANTS**

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